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Paper No. 17

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MAIL

DEC 05 2003

DIRECTOR OFFICE  
TECHNOLOGY CENTER 2600

In re Application of:

CHEN, JINSAUN

Application Serial No.: 09/069,947

Filed: April 30, 1998

For: 3-IN-1 ANTI-NOISE RADIO SOUND-  
COLLECTION DEVICE

DECISION  
ON PETITION

This is a decision on the petition, filed on July 2, 2002 (paper No. 14) under 37 C.F.R. §1.181 to remove holding of Non-Compliance (paper No. 9) and to return the fee for this petition and to return the fee for a three month extension of time. The petition was supplemented with a facsimile submission on August 16, 2002 (paper No. 16) whereby the facsimile transmission included a copy of the original notice of non-compliance mailed April 19, 2002 (copy of paper No. 9 which was no longer in the file record). In addition, Petitioner also submitted a letter (paper No. 15, received August 14, 2002) whereby it was requested that the petition currently under review, be treated instead as a statement of the substance of the interview held June 26, 2002 (paper No. 10).

Given Petitioner desires that the petition be treated as a statement of the substance of an interview, the petition is **DISMISSED AS MOOT**.

37 C.F.R. §1.181 states:

(d) Where a fee is required for a petition to the Commissioner the appropriate section of this part will so indicate. If any required fee does not accompany the petition, the petition will be dismissed.

With regard to Petitioner's request for return of the fee for filing the petition under 37 C.F.R. §1.181 to remove holding of Non-Compliance (paper No. 9), the petition fee was required with the submission of the petition or the petition would have been dismissed.

Petitioner's request for return of the petition fee is **DENIED**.

The following sequence of events lead up to Applicant's filing of the subject petition.

A non-final Office action (paper No. 4) was mailed to the address of record on October 3, 2001. The Office action was returned marked as "Not Deliverable as Addressed"

Unable to Forward". The Office re-mailed and restarted the time for response on November 8, 2001 (paper No. 6). The non-final Office action was again returned, marked as "Not Deliverable as Addressed Unable to Forward". On January 18, 2002, the Office mailed a third copy of the original Office action to a different address (paper No. 7), which apparently was received by Applicant. The shortened statutory period for response to this Office action was due April 18, 2002. On March 19, 2002, Applicant submitted a response (paper No. 8) to the non-final Office action. A notice that Applicant's response was not in compliance with 37 CFR § 1.121 was mailed April 19, 2002 (paper No. 9). Applicant states in their petition that Applicant's representative phoned the examiner on May 8, 2002 to indicate that the notice of Non-Compliance was erroneous in that it appeared that the wrong box was checked in identifying the defect with this response and also in that no box at the bottom of the Notice was checked in order to grant him a period of time to reply. On June 26, 2002, an interview summary was made of record which indicates that the examiner informed Applicant's representative that the amendment was in fact not in compliance, but for different reasons than what was indicated within paper No. 9. Subsequent to that conversation, a new Notice of Non-Compliance was mailed June 18, 2002 (paper No. 11). On July 2, 2002, Applicant filed a petition for three month extension of time (paper No. 12), an amendment (paper No. 13) and the subject petition (paper No. 14) all of which were matched with the application after the mailing of the second, corrected Notice of Non-Compliance.

It is noted that the Office erred in the first Notice of Non-Compliance (paper No. 9) in presenting the correct reasons why the amendment filed March 19, 2002 was not in compliance.

Accordingly, the first Notice of Non-Compliance is vacated in view of the second, corrected Notice of Non-Compliance. The second Notice gave applicant one month (or thirty days) to make the necessary corrections. Therefore, applicant had until August 18, 2002 to submit a response in the proper format.

Regarding Petitioner's request for return of fees for a three month extension of time, it is noted that the necessity for filing an extension of time wasn't required in view of the shortened statutory period for reply set forth in the second, corrected Notice of Non-Compliance.

The request for refund of fees for a three month extension of time is Granted.

The Office regrets the delay in the mailing of this decision.

A review of the file finds that Applicant has never filed a formal request for change of correspondence address, or one has not been matched with the application file. Applicant is reminded of the necessity to properly notify the Office of any correspondence change.

The amendment filed June 26, 2002 is deemed to be compliant with 37 CFR 1.121 and is accepted as responsive to the second Notice of Non-Compliance, mailed July 18, 2002. Therefore, the application is being forwarded to the Technology Center's Technical Support Staff for processing of a refund for the 3 month extension of time and from there will be forwarded to the examiner for appropriate action in due course.

*Mark R. Powell*

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